

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2089 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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K N SHAH

Versus

GUJARAT CO-OPERATIVE OILSEEDS GROWERS' FEDERATION LIMITED

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Appearance:

MR TR MISHRA for Petitioners

MR VIMAL PATEL for NANAVATI ASSOCIATES for  
Respondent No.1 has filed sick note.

DR MUKUL SINHA for GROFED Employees Union  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/12/1999

ORAL JUDGEMENT

This petition has been filed on behalf of the 12  
petitioners who had taken Voluntary Retirement from the  
services of the respondent no.1. The main prayer is for  
the payment of the dues under the Voluntary Retirement  
Scheme with effect from 1.8.1997.

2. So far as the claim of the petitioners under the

Voluntary Retirement Scheme is concerned, the same was not disputed by Mr.Vimal Patel for the respondent no.1 when the matter was heard at length yesterday, but he submitted that the adjustment with regard to the amount of the loan given to any of the petitioners has to be adjusted out of these benefits. In this view of the matter, so far as the direction as has been sought by the petitioners, through this petition for the payment of the dues under the Voluntary Retirement Scheme, there is no impediment. The only question is that according to the respondent no.1, it is not in a position to pay the amount because of the financial crisis which it has been facing. However, during the pendency of this petition, as has been recorded in the order dated 1.9.1999 passed in Civil Application No.6264 of 1998 and the order dated 16th December 1999 passed in the main petition, an amount of Rs.9,37,473/- is readily available for disbursement as has been deposited by the Assurance Company in this Court.

3. This Special Civil Application is, therefore, allowed with a direction to the respondent no.1 Federation to pay the dues of the 12 petitioners under the Voluntary Retirement Scheme benefits which had become due on 1.8.1997 and it will be open for the respondent no.1 to adjust the amount against the loans or advances granted to the petitioners.

4. So far as the question of disbursement of the amount which is available for disbursement is concerned, I have heard Dr.Mukul Sinha on behalf of the GROFED Employees Union which was permitted to intervene on this limited aspect. Dr.Sinha has pointed out that whereas the Liquidator has not taken over and even if the Liquidator appointed under the provisions of the Gujarat Co-operative Societies Act has declined to function as Liquidator, all the assets of the respondent no.1 vest in the Liquidator in accordance with the provisions of Section 108(5) of the Gujarat Co-operative Societies Act and he has also submitted that it is for the Liquidator under Section 110(e) of the Gujarat Co-operative Societies Act to investigate the claims against the society and, subject to the provisions of the Act, to decide the questions of priority arising out of such claims and to pay any class or classes of creditors in full or rateably according to the amount of such debts. He has also submitted that the question of priority may not be taken up by this Court and let it be left to the Liquidator. I have gone through the provisions of Section 108(5) and Section 110(e) of the Act. There is no doubt, that on appointment of Liquidator, the whole of

the assets of the society vest in the Liquidator but here is a case in which in fact, there is no Liquidator in existence and the Liquidator has been appointed only by an interim order and the Liquidator appointed has also declined to take over as Liquidator. The provisions of law cannot be applied in vacuum and they have to be applied looking to the facts and circumstances of each case and, therefore, nothing turns out on the basis of the submissions made with reference to Sections 108(5) and 110(e) of the Act. So far as the provisions of Section 110(e) are concerned, they are applicable in cases where any claim is to be investigated by the Liquidator. Section 110(e) shows the Liquidator's power to investigate the claims. So far as the claims of the petitioners in the present case is concerned, there is nothing which is required to be investigated and their claim for the benefits under the Voluntary Retirement Scheme has been admitted by the respondent no.1 itself and hence, there is no question of any investigation into the claim by the Liquidator so as to consider the priorities for the purpose of making the payment. The provisions of Sections 108(5) and 110(e) are not available for raising any objection on behalf of the GROFED Employees Union.

5. Dr.Sinha further argued that GROFED Employees have not been paid the salary since September 1998 and the unpaid wages have a prior claim over the benefits claimed by the petitioners as a result of the Voluntary Retirement Scheme. It is not in dispute in the facts of this case that the benefits arising out of the Voluntary Retirement Scheme to the 12 petitioners have become due on 1.8.1997 itself and therefore, their claim is certainly prior in point of time vis-a-vis the employees who are claiming with regard to the non-payment of the wages since September 1998. The members of the GROFED Employees Union who have not been paid the wages have not made any substantive claim before any authority so far and they have only filed an application for becoming parties to this petition which has been rejected by a detailed order passed yesterday, i.e. 16th December 1999 and further they were permitted to be heard as intervenors on the question of priority. I, therefore, find that the employees who are members of the GROFED Employees Union and who are complaining of non-payment of wages of the claim cannot claim priority in this petition for the purpose of disbursement of the amount which has been deposited in the Court under the Court's orders during the pendency of this petition by the Assurance Company which was a respondent in this case. Therefore, for this amount which has been deposited in the Court on

the basis of the Court's orders and the orders passed in the Civil Applications and main petition, there is no question of any priority being given to the employees who are members of the GROFED Employees Union. The 12 petitioners had retired way back in 1997 and they are entitled to their claim as per the respondent no.1 itself. Even otherwise, with regard to the grievance of unpaid wages of the employees who are members of the GROFED Employees Union, their claim is not an admitted claim by the respondent no.1 before this Court and that is required to be considered as and when any substantive petition of this claim on behalf of them against the respondent no.1 is filed. Thus, this Court finds that the employees who are members of the GROFED Employees Union cannot claim any priority over the dues of these 12 petitioners who have filed this substantive petition and whose petition has been allowed. The objections raised on behalf of the intervenors, therefore, cannot be entertained and the same is hereby rejected.

6. So far as the disbursement of the amount of Rs.9,37,473/- is concerned, it is ordered that the respondent no.1 shall disburse this amount to the petitioners who are entitled for the benefits of the Voluntary Retirement Scheme after making the deductions including the Income Tax if at all any amount is found to be deductible and this will be deducted as if the tax is deducted at source at the time of making the payment and such amount shall be paid to the Income Tax Department as tax. Whereas it has been given out on behalf of the respondent no.1 that this payment must be subject to the adjustment of the loan or any advances given to the petitioners and whereas it has been pointed out on behalf of the petitioners that their claim is more than Rs.20 lakh and the amount which has been deposited is insufficient to meet the entire claim, such adjustment of the loans and advances may be made at the time when the final payment is made to the petitioners. Mr.T.R.Mishra has submitted that the Provident Fund amount has already been received and, therefore, this amount shall be paid against the Voluntary Retirement compensation and the respondent no.1 shall be under an obligation to pay the rest of the claim to the petitioners under the Voluntary Retirement Scheme at the earliest.

7. With the observations and directions as aforesaid, this Special Civil Application succeeds and the same is allowed. The Rule is hereby made absolute. No order as to costs.

8. It will be open for the GROFED Employees Union to

obtain a certified copy of this order.

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